Moreover, as the court of appeals recognized, "much uncertainty exists as to how rehabilitation is best accomplished." Pet. App. 15. Petitioner's own extensive discussion of the academic commentary (Pet. 14-19) establishes only that the court of appeals was correct when it recognized that "a vigorous, multifaceted, scholarly debate on shaming sanctions' efficacy, desirability, and underlying rationales continues within the academy." Pet. App. 17. Petitioner himself acknowledges (Pet. 11) that, before this case, "no federal court had previously addressed the specific issue of a shaming supervised release condition."

Finally, the court of appeals did not assess the signboard condition in isolation, but evaluated it as part of a package of supervised-release conditions, "including lecturing at a high school and writing apologies, that might loosely be understood to promote the offender's social reintegration." Pet. App. 18. The court found the existence of this combination "highly significant" because it represented a "comprehensive set of provisions" that first exposed petitioner to social disapproval, but then gave him the opportunity "to repair his relationship with society." *Id.* at 18-19. This case therefore does not involve a "stand-alone condition intended solely to humiliate." *Id.* at 18. In those circumstances, further review of the conclusion of the courts below that the signboard condition could serve a rehabilitative purpose on the particular facts of this case would be unwarranted.

2. The signboard condition does not violate the Eighth Amendment.

The Eighth Amendment forbids the infliction of "cruel and unusual punishments." U.S. Const. Amend. VIII. "The basic concept underlying the Eighth Amendment was nothing less than the dignity of man." *Trop* v.

Dulles, 356 U.S. 86, 100 (1958); see *Roper* v. *Simmons*, 125 S. Ct. 1183, 1190 (2005). A practice violates the Eighth Amendment if it exceeds the bounds of "civilized standards" or other "evolving standards of decency that mark the progress of a maturing society." *Trop*, 356 U.S. at 100-101; see *Roper*, 125 S. Ct. at 1190. In determining the prevailing standards of decency, "[t]he beginning point is a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question." *Id.* at 1192.

As the court of appeals held, petitioner has offered no basis for the conclusion that there is a "national consensus," *Roper*, 125 S. Ct. at 1191, against shaming sanctions. Indeed, he has not even approached the "beginning point" of a claim that the Eighth Amendment prohibits shaming sanctions, because he has not cited any "enactment of [a] legislature[] that ha[s] addressed the question." *Id.* at 1192. Cf. Pet. App. 26 (discussing *Blanton* v. *North Las Vegas*, 489 U.S. 538, 544 (1989), in which this Court addressed a state statute that provided a maximum sentence of six months for a DUI offense, or in the alternative, 48 hours in community service while dressed in clothing identifying the defendant as a DUI offender). Numerous state courts, far from agreeing with petitioner's analysis, have rejected Eighth Amendment challenges to shaming sanctions. See, *e.g.*, *People* v. *Letterlough*, 205 A.D.2d 803, 804 (N.Y. App. Div. 1994) ("CONVICTED DWI" sign on license plate); *Ballenger* v. *State*, 436 S.E.2d at 793 (fluorescent pink DUI bracelet); *Lindsay* v. *State*, 606 So. 2d 652, 656-657 (Fla. Dist. Ct. App. 1992) (DUI advertisement in newspaper); *Goldschmitt* v. *State*, 490 So. 2d 123, 125 (Fla. Dist. Ct. App. 1986) ("Convicted DUI - Restricted License" bumper sticker). See generally Stephen P. Garvey, *Can*

Shaming Punishments Educate?, 65 U. Chi. L. Rev. 733, 734 (1998) (describing proliferation of unorthodox and creative shaming punishments). Although petitioner states (Pet. 20) that the decision in this case rejecting his Eighth Amendment claim "conflicts with other circuits," petitioner cites no other court of appeals that has addressed the issue.[5] Further review of petitioner's Eighth Amendment claim is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[5] Petitioner also is not assisted by *Smith* v. *Doe*, 538 U.S. 84 (2003). Contrary to petitioner's suggestion (Pet. 7), the Court in *Smith* did not indicate that the Eighth Amendment would bar a sentence aimed at public humiliation; rather, *Smith* observed that sex offender notification provisions were not about shaming the defendant, but about disseminating truthful information to inform and protect the public, and thus were not punitive for *ex post facto* purposes. 538 U.S. at 98-99. Even if *Smith* were relevant here, which it is not, the district court in this case had rehabilitative and deterrence objectives in mind, not shaming for its own sake.